

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES**

Property Tax Bureau
Informational Guideline Release No. 88-233 Processing Applications for Hardship Exemption
October, 1988

PROCESSING APPLICATIONS FOR HARDSHIP EXEMPTION
(G.L. Ch. 59 §5, CL. 18)

Summary:

Chapter 59, Section 5, Clause Eighteenth of the Massachusetts General Laws sanctions an exemption from real and personal property taxes for, "Any portion of the estates of persons who by reason of age, infirmity and poverty are in the judgment of the assessors unable to contribute fully toward the public charges. " This informational Guideline Release sets out the Commissioner of Revenue's policies and procedures regarding local administration of this exemption.

Guidelines:

- A. An applicant for a Clause 18 exemption, commonly called the hardship exemption, must file an application with the local board assessors on or before December fifteenth of the year to which the tax relates or three months after the tax bill is mailed, whichever is later. (Chapter 758 of the Acts of 1987). Failure to timely file destroys the right to receive this exemption. Guzman v. Assessors' of Oxford, 24 Mass. App. Ct. 118. The assessors may not, under any circumstances, waive the filing deadline. If a filing deadline is not met, the assessors have no jurisdiction over the late filed application.
- B. An applicant must be an individual. Therefore, a corporation or other business entity, is not eligible for this exemption.
- C. An applicant must be aged, infirmed and impoverished in order to be eligible for this exemption. It is not enough for an applicant to meet one or two of these criteria. All three must be fulfilled in order for a hardship exemption to be granted.
 - 1. The statute does not provide specific standards to define age, infirmity and impoverishment. Rather, some flexibility is allowed to assessors in their application of these criteria to specific cases. However, assessors cannot be arbitrary or capricious in processing Clause 18 requests. They must consider each criterion objectively, seeking to determine fairly and equitably whether or not an applicant can contribute toward the public charges.
 - 2. Generally, an applicant must be at least 65 years of age to qualify; however, in some circumstances a younger person might be eligible.
 - 3. An applicant must have some degree of mental or physical ailment. Therefore, the assessors should require submission of documentation which discloses the nature and history of the applicant's infirmity.
 - 4. An applicant must suffer financial deprivation to be eligible for this exemption. Assessors should, therefore, require each applicant to provide all available and relevant financial information. Records and other materials which the assessors might require to be submitted include the following:
 - a. Federal and state income tax returns.
 - b. Savings and checking account statements.
 - c. Pension fund reckonings.
 - d. Records of public assistance.
 - e. Schedules of assets.
 - f. Outstanding bills.

5. In addition to obtaining documentation which assists in disclosing the financial circumstances of an applicant, the assessors should consider other factors which relate to the applicant's ability to contribute toward the public charges. These factors may include but are not limited to:
 - a. Marital status of applicant.
 - b. Whether or not the applicant has children.
 - c. Ages of applicant's children and whether or not the applicant receives money for their support.
 - d. Whether or not applicant is able to work.
 - e. Whether or not applicant is employed.
 - f. Length of time during which applicant has been unemployed.
 - g. Work qualifications of applicant.
 - h. Public assistance received by applicant.
- D. The Appellate Tax Board has no jurisdiction to hear an appeal of a denial by a board of assessors to grant a hardship exemption. The only remedy available to an applicant aggrieved by a denial is to seek a review by the supreme judicial or superior court. *Board of Assessors of Saugus v. Baumann*, 370 Mass. 36. Moreover, the decision of a board of assessors to deny an application for a hardship exemption "may be disturbed only if it is based on a "legally untenable ground, or is unreasonable, whimsical, capricious, or arbitrary." *Burbridge v. Board of Assessors of Lexington*, 11 mass. App. Ct. 546:
- E. A Clause 18 exemption may be granted for "any portion of the estates of persons. " This exemption, therefore, may be a full or a-partial exemption.
- F. An applicant must have an ownership interest in the subject property. If the property is held under a trust, a separation of title results whereby the legal title is vested in the trustee and the equitable title, or beneficial ownership interest, is vested in the beneficiary. A taxpayer must have ownership of a sufficient beneficial property interest and ownership of a record legal interest in order to obtain a personal exemption. *Kirby v. Board of Assessors of Medfield*, 350 Mass. 386 (166). An applicant who holds no more than a beneficial interest lacks the requisite ownership interest needed to qualify for relief under Clause 18.
- G. If the applicant owns the subject property jointly with some other person or persons, all joint owners must independently qualify in order for the applicant to be eligible for this exemption.
- H. Under certain limited circumstances, a Clause 18 exemption may be granted even if the tax bill has already been paid. For example, where it is clear that funds for a tax payment have been borrowed from another, the borrower may still qualify for the exemption. However, since an applicant's income and financial resources are critical factors with respect to qualification for this exemption, a person who has paid the tax has a particularly heavy burden to demonstrate that he lacked the financial capacity to make payment in first place.

The Division of Local Services is responsible for oversight of and assistance to cities and towns in achieving equitable property taxation and efficient fiscal management.

The Division regularly publishes IGRs (informational Guideline Releases detailing legal and administrative procedures) and the BULLETIN (announcements and useful information) for local officials and others interested in municipal finance.

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